IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 59 of 2004

MAGA RAM & ORS
V/S
A.D.J.,BALI, PALI & ORS

Mr. KC SAMDARIYA, for the appellant / petitioner

Mr. SURESH SHRIMALI,Mr.RAJESH CHOUDAHRY, for the respondent

Date of Order : 9.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By the impugned order, the learned trial Court has dismissed the petitioner's application for amendment of written-statement.

The amendment precisely prayed is to add para 7, 8 and 9 in the written-statement. Para 7, 8 and 9 comprehend the contention that the land was purchased in the name of Ganeshmal by the firm on 20.11.47, price whereof was paid by the firm, and since at that time, Chhoga Lal was also one of the partners, the rights of Chhoga Lal also vested in the property, and that without impleading Chhoga Lal as a co-plaintiff, the plaintiff has no right to maintain the suit, and that the suit has been filed by the heirs of Ganeshmal in their individual capacity, while in absence of registration of the firm, the suit is not maintainable. On the query of the Court, it was pointed out that the

plaintiffs, who are heirs of Ganeshmal, have filed the present suit for possession against the defendant alleging him to have committed trespass, wherein the stand of the defendant is that he is in possession under a document from Ganeshmal being 25.10.92, and therefore, they cannot be said to be trespassers. According to the plaintiff, the defendant committed trespass on 16.12.93, while as noticed above, the document claims to be the document of 25.10.92. Learned counsel for the petitioner was positively asked, as to whether he claims any interest in the property through Chhoga Lal or not, to which it was answered that he does not claim anything through Chhoga Lal.

In my view, merely because the petitioner happens to allege that the title of the property originally belongs to the partnership firm, even though it is purchased in the name of the plaintiff, and that the partnership firm comprises of some other persons, who are not the plaintiffs, in these circumstances, it is not necessary to allow the petitioner to incorporate this pleading, as that pleading cannot be said to be necessary for determining the real question in controversy, being as to whether the defendant is a trespasser, or is in possession under a document dated 25.10.92, said to have been executed by Ganeshmal.

The writ petition thus, has no force, and is

dismissed summarily.

(N P GUPTA),J.

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